

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 617  
3334220

BETWEEN                      A LABOUR INSPECTOR  
Applicant

AND                              MOTHER'S THAI LIMITED  
First Respondent

JANYA DUANGJAI  
Second Respondent

Member of Authority:            Peter van Keulen

Representatives:                Karen Sagaga, counsel for the Applicant  
Tim Twomey, counsel for the Respondents

Investigation Meeting:           On the papers

Submissions Received:        17 April 2025 and 23 September 2025 from the Applicant  
14 May 2025 and 23 September 2025 from the Respondents

Date of Determination:         1 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Mother's Thai Limited operates a business known as Diamond Thai massage, offering Thai massage services in three locations in Christchurch.

[2]     Janya Duangjai is the sole director and shareholder of Mother's Thai and manages the Diamond Thai business.

[3]     The Labour Inspector investigated the operation of Mother's Thai's Diamond Thai business in connection with employment standards. As a result of its investigation the Labour Inspector issued enforcement proceedings against Mother's Thai and Ms Duangjai seeking penalties and wage arrears for five employees.

[4] Mother's Thai and Ms Duangjai accept many of the Labour Inspector's claims and an agreed statement of facts has been lodged. As a result, there is an agreement between the parties as to most of the wage arrears owed by Mother's Thai to employees and a basis on which I can assess penalties.

[5] There is however one issue in connection with the wage arrears and penalties that requires determination before orders can be made. Mother's Thai and Ms Duangjai do not accept that one of the five individuals the Labour Inspector says were employees, Parida Lippel (Parida), was an employee rather they say Parida was a contractor.

[6] I have agreed with the parties' representatives that I will determine the issue of status of Parida as a preliminary matter on the papers and then make appropriate orders for wage arrears (also on the papers).

[7] Once the preliminary issue is resolved and wage arrears orders are made, I will then receive submissions on the remaining aspects of the Labour Inspector's action, that is interest on wage arrears, penalties against Mother's Thai, determining if Ms Duangjai was a person involved on the various breaches, penalties against Ms Duangjai if she was a person involved in the breaches and costs if required. I will then determine those issues and make orders.

[8] To determine the status issue on the papers I received written submissions from the parties' representatives and relied on the statement of problem including attachments, the statement in reply and the agreed statement of facts. In a case management conference on 23 September 2025, I clarified with the representatives the reliance I could place on the attachments to the statement of problem given that there was no direct evidence from witnesses.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to finalise the question of penalties, and then I have specified the orders made as a result.

## Assessment of employment status

### *The issues*

[10] The legal test for ascertaining whether a person is an employee is set out in s 6 of the Act. The leading case on how to apply s 6 of the Act, is *Bryson v Three Foot Six Ltd*.<sup>1</sup>

[11] The approach to assessing the status of a worker, based on *Bryson* and subsequent decisions of the Employment Court, that applies to this case is as follows:<sup>2</sup>

- (a) Considering the terms of engagement between the parties to establish if there is a common intention, which may indicate the nature of the relationship but will not be determinative.
- (b) Considering how the work was then carried out in practice, looking for divergences from the agreed terms of engagement.
- (c) Then, based on how the work was carried out in practice applying three relevant common law tests:
  - (i) Control, being an analysis of who decides what work is done and how it is done;
  - (ii) Integration, being an analysis of how integrated the individual is into the business of the alleged employer; and
  - (iii) The fundamental test, being an analysis of whether the individual is in business on their own account.

### *Parties' intentions*

[12] When Parida spoke to Ms Duangjai about working for Mother's Thai in the Diamond Thai business, she says she asked for KiwiSaver to be paid, her tax to be paid and for her

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<sup>1</sup> *Bryson v Three Foot Six Ltd* [2003] ERNZ 581 (EmpC); and *Bryson v. Three Foot Six Ltd (No 2)* [2005] NZSC 34.

<sup>2</sup> *Atkinson v Phoenix Commercial Cleaners Ltd* [2015] NZEmpC 19; *Narinder Singh v Eric James & Associates Ltd* [2010] NZEmpC 1; *Leota v Parcel Express Ltd* [2020] NZEmpC 61; *Barry v C I Builders Ltd* [2021] NZEmpC 61; *Arachchige v Rasier New Zealand Ltd* [2020] NZEmpC 230; and *E Tu Inc v Rasier Operations BV* [2022] NZEmpC 192.

work to be carried out according to New Zealand law. In response Parida says she was told she would not get a contract (a reference to an employment agreement) and she would be paid per client rather than an hourly rate (a wage rate set at \$19, which employees of Mother's Thai were paid) and that Parida would pay her own tax. Parida says she was also told that KiwiSaver was "not good" for her, and she would receive more money if she did not sign up for KiwiSaver.

[13] In her statement to the Labour Inspector, Parida said she had no understanding of New Zealand employment law and did not know the difference between being a contractor and an employee. When Parida asked Ms Duangjai about the difference, she says she was told if she signed a contract (i.e. was an employee) then she would have to be in the shop between 9:00 am and 7:00 pm and be paid the hourly rate (i.e. wages of \$19 per hour); if she was not an employee she would be paid \$30 per client and would only need to be in the shop when there were clients for her.

[14] Mother's Thai and Ms Duangjai intended for Parida to be a contractor. Parida did not want to be a contractor, but I accept she knew she was not being treated as an employee. Based on this I cannot conclude there was a common intention but clearly from the outset of her work with Mother's Thai Parida was meant to be a contractor.

#### *Ongoing performance*

[15] The evidence shows that Parida was paid per client and accounted for her own tax – it appears that Mother's Thai's accountant provided accounting services to Parida in respect of her tax obligations. Parida did not receive annual leave, sick leave or any public holiday entitlements.

[16] Parida says that despite being told she would only need to be available when clients were booked, she was required to be in the shop between 9:00 am and 7:00 pm on the days she worked and between clients she was expected to fold laundry, clean and manage bookings. She says she was also required to carry a work phone to take bookings outside of shop hours.

[17] In terms of the massage services Parida says she used Mother's Thai towels, oils and other products. She also says she was required to wear a tee shirt with a Diamond Thai logo on it.

[18] Parida's account of the time she was required to attend work, the work she was required to do and other obligations (such as using towels and wearing the tee shirt) is consistent with statements made by employees of Mother's Thai.

[19] I conclude that Mother's Thai treated Parida as a contractor from a payment and entitlements perspective but managed her work in the same way it managed its employees.

[20] Against this assessment of how the working relationship operated I will consider questions of control, integration and business operation.

#### *Control test*

[21] The control test involves looking at the work Parida did and assessing who decided what work Parida did, how she did the work and when she did it.

[22] The evidence shows that Mother's Thai, through Ms Duangjai controlled the work that Parida did:

- a. Mother's Thai dictated the hours Parida was required to be at the shop to perform massages and other work for the Diamond Thai business, including taking bookings for massages after hours on the Diamond Thai phone.
- b. Mother's Thai generated work for Parida to do through its Diamond Thai business. There is no evidence to show that Parida generated her own work or received bookings directly for herself either at Diamond Thai or independently – noting here that Mother's Thai asserts that Parida operated her own business in conjunction with her work at Diamond Thai, but there is no evidence to support this.
- c. Mother's Thai controlled how the massage work was done, providing facilities, equipment and products for Parida to use. Mother's Thai also controlled what other work was done including laundry and cleaning work.

- d. There is no evidence to show that Parida could choose what work she did for Mother's Thai or that she could refuse work.

[23] The control test is indicative of an employment relationship.

*Integration test*

[24] The assessment of how integrated Parida was into the Diamond Thai business is unclear. There is conflicting evidence about a uniform and other aspects. Overall I am unable to make any conclusions about integration that inform my view of Parida's status.

*Fundamental test*

[25] The fundamental test is an assessment of whether Parida was operating a business for her own reward or working to further Mother's Thai's business.

[26] There is no evidence to show that Parida was operating her own business. What the evidence does show is she was required to work at Diamond Thia on a full time basis and was not able to influence the work she received, i.e., it appears most likely that she was unable to generate her own work and further an enterprise for herself.

[27] The fundamental test indicates that Parida was an employee.

*Conclusion*

[28] Parida commenced work with Mother's Thai as a contractor. She did so despite wanting to be an employee, the contractor status was effectively imposed on her. Parida did not operate as a contractor and was treated as an employee - viewed objectively (i.e. compared to employees generally) and subjectively (i.e. compared to the other employees employed by Mother's Thai). In particular, the level of control exerted over Parida's work and the lack of evidence to support the contention that she was running her own business indicate Parida was an employee of Mother's Thai.

[29] Overall, I conclude that Parida was an employee of Mother's Thai.

## Orders

[30] Based on my determination regarding Parida's status and the agreed statement of facts, in which Mother's Thai accepts the amounts of wage arrears claimed by the Labour Inspector, Mother's Thai owes the following amounts as wage arrears to five employees:

Name / Breach	Wissuta Petkaew	Parida Lippel	Kamonwan Streeta	Duangdao Chaliaklang	Paliyapat Sripirom	TOTAL
Minimum Wage Arrears	\$ 9,320.00	\$ 5,195.21	\$ 46,443.53	\$ 47,949.84	\$ 45,968.35	\$ 154,876.94
Deductions	\$ 56.00	n/a	\$ 10,058.89	\$ 10,564.63	\$ 9,888.10	\$ 30,567.62
Premium	n/a	n/a	\$ 1,414.19	\$ 1,866.22	\$ 2,122.00	\$ 5,402.41
Annual Holiday Arrears	n/a	n/a	\$ 1,113.75	\$ 3,132.68	\$ 2,377.44	\$ 6,623.87
Final Holiday Arrears	\$ 1,355.20	\$ 2,723.35	\$ 3,632.32	\$ 5,773.28	\$ 4,325.34	\$ 17,809.49
Sick Leave (s71)	n/a	n/a	\$ 1,562.33	\$ 1,202.28	\$ 379.86	\$ 3,144.47
Unworked Public Holiday (s 49)	\$ 968.00	\$ 668.40	\$ 831.85	\$ 1,106.76	\$ 624.75	\$ 4,199.76
Worked Public Holiday (s 50)	\$ 12.00	\$ 787.50	\$ 515.46	\$ 1,582.32	\$ 1,884.84	\$ 4,782.12
Alternative Holiday (ss 56 & 60)	\$ 320.00	\$ 512.97	\$ 822.67	\$ 941.91	\$ 1,733.74	\$ 4,331.29
TOTAL	\$ 12,031.20	\$ 9,887.43	\$ 66,394.99	\$ 74,119.92	\$ 69,304.42	\$ 231,737.96

[31] Mother's Thai is ordered to pay the wage arrears as set out to the Labour Inspector. The Labour Inspector will distribute the arrears to the relevant employees.

## Next steps

[32] Directions of the Authority will be issued to the parties outlining the requirements for submissions for the aspects of this employment relationship problem that need to be determined.

## Costs

[33] Costs are reserved.

Peter van Keulen  
Member of the Employment Relations Authority